

**APR 12 2006**

**NOT FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS**

**CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

HARUN HARUNI; et al.,

Petitioners,

v.

ALBERTO R. GONZALES, Attorney  
General,

Respondent.

No. 05-70880

Agency Nos. A74-438-951  
A74-438-952  
A74-438-953

MEMORANDUM\*

On Petition for Review of an Order of the  
Board of Immigration Appeals

Submitted April 5, 2006\*\*

Before: HAWKINS, McKEOWN and PAEZ, Circuit Judges.

Harun Haruni, and his wife and son, natives and citizens of Albania, petition for review of the Board of Immigration Appeals' ("BIA") order denying their motion to reopen removal proceedings due to ineffective assistance of counsel.

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\* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

\*\* The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

We have jurisdiction pursuant to 8 U.S.C. § 1252. We review for abuse of discretion the BIA's denial of a motion to reopen, *Iturribarria v. INS*, 321 F.3d 889, 894 (9th Cir. 2003), and we deny the petition for review.

Petitioners filed their motion to reopen over one year after the BIA issued its final order. The BIA did not abuse its discretion in refusing to apply equitable tolling in this case because Petitioners did not demonstrate due diligence in pursuing their ineffective assistance of counsel claim. *See id.* at 897 (holding that equitable tolling applies “during periods when a petitioner is prevented from filing because of deception, fraud, or error, as long as the petitioner acts with due diligence in discovering the deception, fraud, or error”). Accordingly, the BIA did not abuse its discretion in denying Petitioners' motion as untimely. *See* 8 C.F.R. § 1003.2(c)(2).

**PETITION FOR REVIEW DENIED.**